

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 404 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

PATEL VAJU MOHAN

Appearance:

MR KP RAVAL,APP for Appellant
MR DN VORA for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE K.R.VYAS

Date of decision: 24/07/1999

ORAL JUDGEMENT

Per:K.R.Vyas,J.

1. The State of Gujarat has preferred this appeal
against the judgment and order dated 4.2.1992 passed in
Sessions Case No.57 of 1989 by the learned Addl.
Sessions Judge, Gondal, acquitting the respondents
accused for the offence under section 302 read with
sections 34 and 114 of the IPC and section 135 of the
Bombay Police Act.

2. Both the accused were charged for committing murder of the deceased Nanbha Keshubha by inflicting blows with knife at about 10.20 p.m. on 13.9.1989 near the Office of the Gram Panchayat of village Samdhiyala within the jurisdiction of Patanvav Police Station of Rajkot District. According to the prosecution, the incident was witnessed by the complainant Bachubha Dolubha, PW 20 Ex. 47, Virabhai Jikabhai, PW 21 Ex. 48 and Sangabhai Bhurabhai, PW 22 Ex. 49, the security guard in the forest department. Both the accused denied their involvement in the offence in their statement before the Court under section 313 of the Code of Criminal Procedure.

3. The learned trial Judge, at the end of the trial, after appreciating the evidence, came to the conclusion that the prosecution has failed to prove the charge levelled against the accused in view of number of infirmities in the prosecution case and, therefore, acquitted both the accused.

4. Mr. K.P. Raval, learned APP appearing for the appellant- State, after inviting our attention to the evidence of prosecution witnesses, submitted that the trial court has committed an error in acquitting the respondents- accused. In the submission of Mr. Raval, in view of the evidence of three eye witnesses, even if there are certain infirmities in their evidence, on overall appreciation of their evidence, the prosecution has succeeded in establishing the guilt of the accused. Mr. Raval, therefore, submitted that this appeal is required to be allowed.

5. Having carefully scrutinised the evidence of P.W. 20, 21 and 22, who had posed to be the eye witnesses, in our opinion, their evidence do not inspire confidence. Their presence at the scene of offence at the time of commission of the offence has remained doubtful. According to the complainant, the incident happened at about 9.30 to 10.00 p.m. At that time, he was with PW 20 Sangabhai Bhurabhai at the bus stand. Both of them heard the cries while according to the evidence of PW 22 Sangabhai, at about 8.00 p.m., he was at the bus stand and after having a pan, at about 8.15 p.m., he saw the quarrel between the deceased Nanbha on one side and the accused on the other. He intervened and separated them. Thereafter, he had gone to the forest to have a round there and again returned to the bus stand at about 8.45 p.m. According to him, after about half an hour, PW 20, the complainant came there. Both of them again purchased

pan. According to the PW 22, he alone thereafter went to the house of the deceased. However, as he did not find the deceased, he again returned to the bus stand and sat with PW 20. In view of this, it is obvious that the evidence of PW 20 as well as PW 22 contradicts each other. Not only that, PW 22 having met the complainant PW 20 at the bus stand, he is contradicted with his police statement when no such fact has been recorded. On the contrary, it is brought out in his police statement that at about 10.15 p.m., after drinking soda water, the deceased as well as PW 21 Virabhai Jikabhai were proceeding towards the Panchayat Office and he (PW 22) was following them. At that time, the deceased had a quarrel with the accused. Thereafter, both the accused started giving blows with knife to the deceased. Having seen the map, it appears that the bus stand as well as bazar are quite on different and opposite direction to the place of the incident. The evidence of PW 22 Sangabhai does not inspire confidence in view of the fact that after witnessing the incident, he has proceeded towards the forest and did not inform anybody about the incident till the evening on the next day when his statement was recorded by the police. This conduct on the part of the PW 22 is quite unnatural and creates doubt about his claim of witnessing the incident. Similarly, the evidence of PW 21 Vira Jika is also not believable. Admittedly, he is the friend of the deceased. He has been contradicted with his police statement on material aspects. According to him, on the night of the incident, after having his meals, he had gone to the Panchayat Office where he saw the quarrel between the deceased and the accused. He also saw the accused no.1 inflicting knife blow on the chest as well as on the abdomen of the deceased. When he tried to intervene, the accused no.2 gave him a kick blow and also inflicted two knife blows on the back portion of the deceased. According to him, PW 20 and PW 22 immediately came there. He has been contradicted with his police statement wherein he has stated that he was in the company of the deceased at about 10.00 or 10.15 p.m. near the water tank of the Panchayat Office and when they were talking, both the accused came there. In the cross examination, this witness PW 21 has come out with an entirely a new case by stating that after reaching the Panchayat Office, they had gone to ease themselves by passing ruine near the Panchayat Office and at that time, he saw both the accused sitting at the Panchayat Office and when the deceased had gone near the water tank, the accused started quarrelling with him. In view of different versions given by the three eye witnesses regarding the time, place and the origin of the incident,

it is not possible for us to place any reliance on their evidence. The learned trial Judge, after appreciating their evidence, has rightly termed them as chance witnesses; especially their presence at the scene of offence at odd hour at night creates doubt about their having seen the incident. It is not in dispute that PW 20, the complainant is not the resident of village Talgana and there was no special reason for him to come to the village where the incident had taken place.

6. The complainant in the instant case filed the complaint Ex. 69 before PSI Dave at village Kathrota when PSI Dave was on night patrolling duty. PSI Dave, in his evidence in the cross examination, has also stated that he recorded the complaint at the Gram Panchayat Office of village Kathrota while the complainant in his cross examination has admitted that the complaint was recorded by PSI Dave at village Samdhiyala. PW 21 Virabhai Jikabhai, in his evidence, has also admitted that the complaint was recorded by the police after visiting the scene of offence at village Samdhiyala. Thus, when the witnesses are giving contradictory versions regarding the recording of the complaint, the case in hand is not free from doubt and it would be reasonable to infer that the complaint was recorded after due deliberations by selecting the witnesses to implicate the accused in the commission of the offence. The manner in which the inquest panchanama was prepared will also go to reveal the type of investigation carried out in the matter. The inquest panchanama Ex. 18 was made at 12.30 a.m. of the same night. A copy of the inquest panchanama Ex.18 given to the doctor is produced wherein the time is kept blank and it was filled in later on. This would clearly go to show that the inquest panchanama was not prepared at the time shown therein, but the blank can be filled in as per the desire and convenience of the Investigating Officer. Thus, the investigation is also not fair to the accused and the possibility of involving the accused in the commission of the crime also cannot be ruled out.

7. In view of the above discussion, we are of the opinion that in the instant case, the prosecution has failed to prove the charge of murder levelled against the accused and the learned trial Judge is perfectly justified in passing the order of acquittal in favour of the accused. Needless to say that we are in total agreement with the reasonings given by the learned trial Judge. There being no substance in the appeal, it is dismissed. Bail-bonds shall stand cancelled.

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